

## DOCKETED

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**Resources for Community Development Comments on Proposed Regulations for Building Energy Use Benchmarking and Public Disclosure (AB 802)**

*Additional submitted attachment is included below.*



April 10, 2017

California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814-5512

Subject: Docket Number: 15-OIR-05

**Resources for Community Development Comments on Proposed Regulation for Building Energy Use Benchmarking and Public Disclosure (AB 802)**

**Introduction and Background**

Resources for Community Development (RCD) appreciates the opportunity to provide comments in response to the California Energy Commission's (CEC) Proposed Regulations to Implement Building Energy Usage Data Access, Benchmarking, and Public Disclosure Provisions of Assembly Bill 802 (AB 802). We appreciate the public comment and participation process the CEC has overseen to implement AB 802 in a manner that works for all sectors. Resources for Community Development is a nonprofit affordable housing developer that creates and preserves affordable housing in the Bay Area for people with the fewest options, to build community and enrich lives.

We raise several issues of unique concern to the multifamily housing and affordable housing sectors.<sup>1</sup> While we greatly appreciate the CEC's initial efforts to implement AB 802, in its current form, the Proposed Regulations fall short in ensuring that low-income households throughout the state benefit from the value of data access and benchmarking.

**In summary, our recommendations include:**

1. The CEC should amend the Proposed Regulations to ensure owners of garden style apartments are able to receive property-level data, as permitted under AB 802. We urge the CEC to address this issue before finalizing the regulations.
2. We urge the CEC to revise how building ownership is defined and verified by utilities to facilitate a reasonable process for owner submission of data requests.
3. We urge the CEC to require utilities to deliver building owners with the customer names, addresses and unit numbers associated with the data request, along with a full list of meter numbers to enable owners to verify the accuracy of provided data, as the CEC provided in its previous version of regulations.
4. The CEC should use authority granted under AB 802 to ensure a streamlined pathway exists for tenant-level data with customer consent.
5. We recommend the CEC develop outreach, training and educational resources that specifically target the low-income multifamily housing sector.

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<sup>1</sup> RCD collaborated with California Housing Partnership Corporation et al. to develop these comments.

- 1. The CEC should amend the Proposed Regulations to ensure owners of garden style apartments are able to receive property-level data, as permitted under AB 802. We urge the CEC to address this issue before finalizing the regulations.**

As CHPC and NRDC have described in their previous comments, by narrowly defining residential “covered buildings” as buildings with “five or more Active Utility Accounts or any one Energy type,” the CEC’s proposal excludes Building Owners with garden or campus style apartment properties from the benefits of AB 802’s data access provisions. The interpretation places undue burden on this property type, many of which are low-income deed-restricted buildings that are owned and managed by nonprofit organizations that lack the staff capacity to collect large numbers of consent forms.

AB 802 does not restrict the CEC’s ability to allow owners to request aggregated data from multiple buildings, if the request in aggregate is greater than five or more Utility accounts. Further, the CEC’s definition of covered building already extends to parcels, campuses, or sites served by a common energy meter. A simple adjustment would address this issue for parcels or sites with separate metering as well.

**Specific recommendation:**

We urge the CEC to modify the following definition of “covered building:”

Section 1680(e):

Two or more Covered Buildings on the same parcel, campus, or site, that are served by one common Energy meter without sub metering, such that their Energy use cannot be tracked individually, shall be considered one Covered Building.

Two or more Covered Buildings on the same parcel or site with a total of five or more Utility Accounts, even if Energy use can be tracked individually, shall be considered one Covered Building.

Alternatively, we urge the CEC to allow owners to request data for multiple buildings, as follows:

Section 1682(a):

The Owner of a Covered Building, or the Owner’s Agent, may request Energy data from each Utility serving a Covered Building or an aggregation of buildings on a single parcel, site or campus with a total of five or more Utility Accounts, by providing the following information.

**Explanation:**

- It is imperative that the CEC require utilities to provide property-level data to multifamily owners that meet the five-account threshold.** This will enable inclusion of a substantial number of buildings that are currently excluded on the basis of a structural technicality that fails to recognize the reality of how contemporary housing, including affordable housing, is physically configured. From the owners’ operational perspective, there is little difference between how energy services are managed, delivered and potentially conserved to a cluster of suburban four-plexes vs. a downtown high-rise.

- **Affordable housing outside of densely populated urban areas is often constructed as garden style apartments, which include multiple buildings of three-or-four-plexes on one property.** Other configurations include campus style properties where a small number of the buildings have fewer than five units each, and the balance of structures each have 10 or more apartment homes. Further, there are over 600,000 renter-occupied multifamily buildings in California comprised of four units or under.<sup>2</sup> This problem is particularly acute in rural and suburban areas. *Resources for Community Development has 12 partly or entirely ineligible properties (for a total of 380 units) due to the five-account building rule.*
- **A secondary reason for supporting a broader definition that includes garden-style properties is that most state and Investor Owned Utility (IOUs) energy efficiency programs adopt a property-wide definition for program eligibility.** Energy Efficiency Program Administrators and building owners need consistent and accurate energy use data to improve audit accuracy and enable targeting of the most cost effective energy upgrades. Other supporting reason to include a property-wide definition include:
  - Many properties have an exterior lighting account tied to an individual address, but any site lighting serves the entire property. When aggregating data at the building-by-building level, either this energy use could get missed, or would show up as disproportionately impacting an individual building.
  - Some multifamily properties have central Domestic Hot Water Systems (DHW) systems that serve multiple buildings. The DHW plant could have its own separate address, or more likely than not is associated with one residential building address, even though it serves multiple buildings. If aggregating data on the building-by-building level, this energy use could potentially get missed, or would show up as disproportionately impacting an individual building.
  - Many multifamily properties consist of stand-alone buildings providing resident amenities such as laundry rooms, pools, or community room. A pool or community room frequently has a stand-alone address, and would get missed at the property level analysis, since the building likely has less than five accounts associated with it. A laundry room could either be a stand-alone address, or tied to a residential building address, even though the residents in other buildings use the laundry services at this address. If aggregating at the building-by-building level, this energy use could get missed, or would show up as disproportionately impacting an individual building.

**2. We urge the CEC to revise how building ownership is defined and verified by utilities to facilitate a reasonable process for owner submission of data requests.**

Since the last version of regulations, the CEC has adopted a number of changes that will make it increasingly difficult for owners to make and receive data requests. For example, the CEC’s definition of owner does not account for the unique arrangements of multifamily affordable properties. Another potential owner verification issue arises in Section 1682 (a)(1)(c): by generally requesting that owners submit “information that verifies the Person submitting the request is the Building Owner or Owner’s Agent,” the CEC opens the door to broad interpretation by utilities to impose any number of rules around establishing ownership. We recommend that the CEC provide more guidelines in the regulations in order to prevent an onerous process for building owners.

**Specific recommendations:**

We urge the CEC to modify the following:

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<sup>2</sup> United States Census Bureau/American Fact Finder. “B25032: Tenure by Units in Structure: California.” 2014 *American Community Survey 1-year estimates*. Web. 9 August 2016.

**Section 1681 (d):**

Building Owner – The Person listed as the Building Owner on the current deed or the most recent mortgage statement for the property on which the building for which Energy use data is requested is located, or the Person who can otherwise verify with reasonable certainty ownership of the building, for example, through an electronic or paper waiver signed by the owner or owner’s agent verifying ownership.

**1682 (a)(1)(c):**

Information that verifies that the Person submitting the request is the Building Owner or Owner’s Agent. An electronic or paper waiver signed by the owner or owner’s agent should suffice as verification, and should remain valid until there is a change in ownership.

**Explanation:**

For the purposes of the Proposed Regulations, the CEC is currently defining “Building Owner” as “An individual or entity identified as the current owner on the current deed or most recent mortgage statement for the property on which the building for which energy use data is requested is located ” (Section 1681, “Definitions”). As written, this definition does not account for the unique ownership arrangements of multifamily affordable housing. For example, to access the federal Low Income Tax Credit (LIHTC) program, the Internal Revenue Code requires non-profit housing sponsors to develop housing in partnership with for-profit corporations that have the ability to use these tax credits.<sup>3</sup> However, because nonprofit developers must create separate limited partnerships (LPs) or limited liability corporations (LLCs) with an affiliated nonprofit corporation serving as the managing general partners or managing member for each new LIHTC development, the parent nonprofit affordable housing corporation (in effect, the building owner) is often not listed as the legally recognized general partner, even though the parent corporation controls the general partner it created to manage the development. The implication is that the organization requesting the information may not match the organization on the deed or recent mortgage statement. As a result, multifamily building owners run the risk of not being recognized as building owners by the utilities under the current AB 802 recommendations. The industry standard practice is for the utility to accept an electronic or paper form signed by the owner or owner’s agent (i.e., property manager).

- 3. We urge the CEC to require utilities to deliver building owners with the customer names, addresses and unit numbers associated with the data request, along with a full list of meter numbers to enable owners to verify the accuracy of provided data, as the CEC provided in its previous version of regulations.**

One of the most significant changes to the CEC Proposed Regulations from the Initial Staff Proposal is Utility Requirements, in Section 1682(b)(1). The initial proposal required utilities to provide the Building Owner or Owner’s agent with: a) all meters associated with the account, b) a list of all customers associated with the building, and c) the building identification, if available.

The Proposed Regulations significantly scale back the information provided back to building owners to only requiring utilities to provide the “last four characters of the meter number for each meter serving the building.” Many multifamily building owners, who may own and operate thousands of units of housing, do

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<sup>3</sup> The federal Low Income Housing Tax Credit (LIHTC) program has been the primary source of funding for all affordable rental housing in the nation since 1987.

not retain complete records of all the meter numbers associated with their buildings. As a result, using the last four characters of the meter number to verify whether the utilities have in fact included the correct collection of accounts is an unworkable and ineffective solution to ensuring the accuracy of the energy data that utilities send to owners.

We urge the CEC to instead provide owners with customer names, addresses, unit numbers, and the complete meter numbers associated with the account to ensure that owners who do retain information on building meters have another avenue to verify whether the energy usage information they receive from utilities is correct. Owners already have a full list of tenant names for their properties and have the ability to physically read each individual physical meter. However, the burden on owners to physically verify this information, including by burdening tenants in their apartment dwellings is unreasonable and ineffective.

### **Specific recommendation**

We urge the CEC to modify its regulations as follows:

#### **1682(b)(1):**

For each Energy type, the Utility shall deliver the following information to the Building Owner or Owner's Agent:

- (A) ~~The last four characters of the~~ A list of meter numbers for each all meters serving the building.
- (B) The building address and list of all units associated with the building
- (C) A list of all Utility customers associated with the building.
- (D) The Building Identification Number, if available.

#### **4. The CEC should use authority granted under AB 802 to ensure a streamlined pathway exists for tenant-level data with customer consent.**

AB 802 specifically grants the CEC authority to streamline the individual tenant consent process for building owner access to data:

- (f) For buildings that are not covered buildings, and for customer information that is not aggregated pursuant to subparagraph (A) of paragraph (2) of subdivision (c), the commission may adopt regulations prescribing how utilities shall either obtain the customer's permission or determine that a building owner has obtained the customer's permission, for the owner to receive aggregated energy usage data or, **where applicable, individual customer usage information, including by use of electronic authorization and in a lease agreement between the owner and the customer.**

However, the CEC's regulations currently remain silent as to how residential and mixed-use buildings obtain customer consent for tenant-level data, or how residential or mixed-use buildings with five or fewer accounts obtain customer consent. We strongly urge the CEC to reconsider and to adopt our proposed amendments below.

### **Specific Recommendation:**

At a minimum, the CEC should exercise its authority and require utilities to automate and streamline the tenant consent process by developing standard CISR forms that can be used statewide and across utilities. PG&E's CISR form and automated data retrieval process is a potential model that we recommend be replicated by other utilities (see Attachment A for a copy of PG&E's CISR form).

We also recommend the CEC modify the regulations as follows:

**Section 1681 (b)(4):**

If a Utility receives a request for Energy use data for a building that has: (1) fewer than three Utility Accounts of any Energy type the Utility provides, none of which are residential, ~~or~~ (2) fewer than five Utility Accounts of each Energy type the Utility provides, at least one of which is residential, **or (3) any size building seeking tenant-level data**, the Utility shall not provide the information listed in subdivision (b)(1) & (2) unless customer permission is obtained from each utility customer other than the Building Owner.

**Explanation:**

- While access to whole building energy usage data will provide significant benefits, most owners of garden style apartments (with buildings less than 5 units) and deed-restricted affordable housing of all sizes will continue to need more granular data on energy usage at their properties for two main reasons: (1) owners need more granular data on energy usage in order to identify cost-effective efficiency improvements, which in turn helps ensure long-term housing affordability; and (2) because it is required by federal and state housing regulations. The data is needed to calculate tenants' "Utility Allowance" necessary to comply with the requirement that tenant payments for both housing and utility costs are capped by law in federally- and state-funded affordable housing at 30 percent of the tenant's income (or 30% of the tenant's income bracket in the case of Low Income Housing Tax Credit properties).<sup>4</sup>
  - The current process for obtaining tenant consent is burdensome and largely ineffective. Under current practice, owners have to request and obtain written customer signatures on individual "CISR" forms from each utility service territory that their buildings fall within.
  - Building owners attempting to obtain this information routinely encounter a range of inconsistent utility protocols and practices with respect to obtaining tenant and utility consent. In the event that owners do gather permissions, there is no way to receive utility data on a monthly, ongoing basis packaged by property. Further, the data is often not provided in a format that can be uploaded to energy management software.<sup>5</sup>
  - By remaining silent on the process to obtain customer permission for tenant-level data, the CEC is potentially creating conflicting and duplicative processes for owners and utilities. Many large building owners both will need whole-building data to publicly benchmark their buildings and individual tenant-level data to comply with federal and state requirements or identify more specific tenant-level upgrades. Under the currently proposed regulations, owners would have to undergo two separate data sharing processes.
- 5. We recommend the CEC develop outreach, training and educational resources that specifically target the low-income multifamily housing sector.**

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<sup>4</sup> Please see CHPC's December 31, 2015 comments for more background on the need for tenant data.

<sup>5</sup> Once owners receive data, there is a lack of consistency regarding how the accounts and files are linked together. For example, the tenant usage data for one property might come in separate batches at separate times. One utility only delivers data in PDF, which creates barriers to electronically uploading data into benchmarking software.

AB 802 has the potential to offer many benefits to multifamily buildings owners and the low-income residents they serve. However, understanding how to request energy usage data from utilities and how to comply with the state-benchmarking component will be a learning process, and building owners often lack the time and staff capacity to seek out this information. We recommend that the CEC develop an AB 802 outreach strategy to provide building owners who serve low-income communities with extra resources and support as the law is implemented.

**Conclusion**

Resources for Community Development appreciates the opportunity to provide these comments regarding the Proposed Regulations. We look forward to working with the California Energy Commission and interested stakeholders on the implementation of AB 802. Resources for Community Development also endorses the comments of the California Housing Partnership Corporation et al.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nick Griffin". The signature is stylized and cursive.

Nick Griffin  
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